IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1286 OF 2004

Anusaya Krishna Kadam & Anr. .. Appellants

Versus

Appa Anna Kadam & Ors. .. Respondents

Mr.Kuldeep Patil for appellants

Mr.R.V.More for respondent no.1

CORAM : P.V.KAKADE, J.

DATE : 7TH JULY, 2005.

P.C.:

1. This is an appeal preferred by the appellant against the judgment and order passed by Addl. District Judge, Sangli dismissing the Reg.Civil Appeal No.580 of 1991 as well as Reg.Civil Appeal No.581 of 1991. Both the said appeals were disposed of together as they related to the same parties and parties involved also were the same. They arisen out of Regular Civil Suit No.208 of 1987 and Regular Civil Suit No.191 of 1987.

Reg. Civil Suit No.191 of 1987 was filed by plaintiffs - Anusaya and others for declaration of the sale deed as null and void and for possession of the suit land whereas the other suit i.e. Reg.Suit No.208 of 1987 was filed by Appa Anna Kadam for perpetual injunction.

. The plaintiff in R.C.S.No.191 of 1987 Anusaya pleaded that the sale deed was null and void and on that count possession was sought for. It was the case of the plaintiff that the sale deed executed by her on defendant no.1 on 13.7.1977 for Rs.6000/= regarding the suit property was void ab-initio on the ground that the defendant no.1 had committed fraud on her by obtaining execution of document. It was further submitted that since the land was already encumbered by the encumbrance of Cooperative Society when it was transferred in favour of the defendant no.1. The suit was also hit by provision of Sections 47 and 48 of Maharashtra Cooperative Societies Act and on such and other grounds the suit for declaration and consequent possession came to be filed. The defendants resisted the suit on various grounds and submitted that the sale transaction was legal and valid and therefore, suit was sought to be dismissed. The defendant no.1 also filed Regular Civil

Suit No.208 of 1987 for perpetual injunction against the plaintiff-Anusaya from obstruction their possession in the suit property.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that plaintiff-Anusaya had not proved alleged fraud and therefore, the suit transaction was legal and valid. It was also held that there was no bar of Sections 47 and 48 of the Maharashtra Cooperative Societies Act and as such the suit came to be dismissed. Similarly other suit for perpetual came to be decreed and perpetual injunction was granted against the present appellant.

2. The appeals were carried to the District Court, Sangli. The Alld. District Judge after hearing both the parties and on the basis of available evidence came to the conclusion that the appellants' plea in both the suit deserves to be dismissed and as such the appeals were dismissed by order dated 29.1.2004.

3. I have heard the learned counsel for both the parties. Perused the record.

4. At the outset it may be noted that there is no substantial question of law involved in this appeal. The issue regarding alleged fraud has been properly adjudicated by both the courts below holding that there was no sufficient evidence on record to show that the appellant was subjected to fraud while executing the impugned Sale Deed. So far as issue regarding bar of Sections 47 and 48 of the Maharashtra Cooperative Societies Act is concerned the issue is settled by judgment of this Court in the case of **Narayan Kisan Gade vs. Machchindranath Kundlik Tarade** reported in **1994 Mh.L.J. 558** wherein it is held that when plaintiff sold land encumbered to society with knowledge, he cannot claim that the transaction was void under Sec.48 and he was entitled to possession as he himself being guilty. It was further held that Section 65 of Contract Act was not applicable. It was the society who could challenge transaction as void and not the plaintiff. In view of this aspect, both the courts below have rightly discarded the plea of the appellant that the suit is hit by the said provision under the Maharashtra Cooperative Societies Act.

5. Therefore, I am satisfied that there is no merit

in the appeal and consequently the appeal stands dismissed as no order to costs.

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